Supreme Court, U.S.
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IN THE
Supreme Court of the United States

CAROL MANIGAULT, Individually and as Administratix ad Prosequendum and General Administratix of the Estate of Jelani Darren Manigault, Deceased; ANDREW MANIGAULT, Individually and as parents and Natural Guardians of Jelani Darren Manigault,

Petitioners,

v.

CHRISTOPHER KING; HARRY MARTINEZ; FRED WILLIAMS; JUDD PETRONE; TOWNSHIP OF PRINCETON; PRINCETON TOWNSHIP POLICE DEPARTMENT; JOHN AND JANE DOES 1-10; ABC CORP. 1-10; XYZ ENTITIES 1-10,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether the District Court erred in granting summary judgment on behalf of defendants, Christopher King, Harry Martinez, Fred Williams and Judd Petrone on plaintiffs' claim under 42 U.S.C. § 1983 when material issues of fact exist as to the reasonableness of the conduct of the police officer given the decedent's mental condition.

LIST OF PARTIES

Plaintiffs: Carol Manigault, Individually and as Administratrix ad Prosequendum and General Adminstratrix of Estate of Jelani Darren Manigault, Deceased; Andrew Manigault, Individually and as Parents and Natural Guardians of Jelani Darren Manigault

Defendants: Christopher King, Harry Martinez, Fred Williams, Judd Petrone, Township of Princeton and Princeton Police Department

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OPINIONS BELOW

The opinion of the Third Circuit Court of Appeals is unreported and appears at Appendix A. The Amended Memorandum and Order of the United States District Court District of New Jersey, No. 3-05-CV-00422 (D.N.J. Aug. 13, 2008) is unreported and appear at Appendix B.

STATEMENT OF JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1). The opinion of the Third Circuit Court of Appeals and the Judgment affirming the decision of the District Court were filed on July 13, 2009.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Title 42 United States Code, Section 1983.

> Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory or the District of Columbia causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress
> . . . .

Fourth Amendment Constitution United States

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

STATEMENT OF THE CASE

This matter arises out of a tragic set of facts involving decedent, Jelani Manigault (hereinafter referred to as "Jelani"). In the early morning hours of January 23, 2003, at the age of 24, Jelani was killed in a confrontation with several police officers from the Township of Princeton. Plaintiffs filed suit against defendants in United States District Court, District of New Jersey alleging violation of 42 U.S.C. § 1983 as well as several state claims including: Wrongful Death (First Count); Respondeat Superior (Second Count); Negligent Hiring/Training/Retention (Third Count); Survivorship action (Fourth Count); Emotional Distress/ Portee Claim (Fifth Count), and Loss of Services (Sixth Count). Defendants moved for summary judgment. Despite the evidence and facts submitted by plaintiffs in support of their claim that the actions of the defendant police officers in using deadly force were unreasonable, the District Court granted defendants' motions.

The relevant facts discovered during pre-trial discovery establish that the defendant police officers' use of deadly force under the peculiar facts and circumstances of this case violated Jelani's constitutional protections under the Fourth Amendment of the United States Constitution and violated his civil rights as guaranteed under 42 U.S.C. § 1983. The facts as presented to the District Court establish that Jelani was shot three times. The first bullet was discharged by Office King and struck Jelani in the groin/lower abdomen. The undisputed testimony of the three police officers who appeared for sworn depositions establish that Jelani had been stopped in his tracks by the bullet discharged by Officer King and had already begun to slump over when Officer Martinez discharged two bullets, one of which fatally wounded Jelani. Thus, at the time that the fatal shot was fired by Officer Martinez, there was no perceived threat to any of the defendant officers as Jelani had already been hit by a shot fired by Officer King and was, by all accounts, slumping towards the ground. Despite this uncontradicted testimony, the District Court ruled, as a mater of law, that the actions of the defendant police officers were reasonable. This factual finding was upheld by the Third Circuit Court of Appeals.

In addition to the overwhelming evidence that the first shot fired by Officer King essentially stopped any perceived threat by Jelani, the undisputed facts establish that Jelani was an emotionally disturbed individual which was evidenced by the fact that he was not wearing any shoes or jacket despite freezing temperatures, had freshly slit wrists with blood all over him as a result of trying to kill himself and had shouted

out to the police officers several minutes earlier "kill me, kill me". These facts relating to the obvious mental status of Jelani, coupled with the facts, as testified to by three of the four officers involved in the incident, as to the actions of Jelani between the time of the first shot fired by Officer King and the fatal shot fired by Officer Martinez support plaintiffs' claims that the actions of the defendant police officers were unreasonable and that the force used was excessive.

The undisputed facts also establish that the defendant officers own actions in surrounding an obviously mentally disturbed Jelani and closing in around him to within a distance of 10-12 feet in violation of police procedure, precipitated the defendant officers' use of deadly force. Both the District Court and the Third Circuit dismissed this relevant testimony and essentially ruled that it did not impact upon the alleged constitutional violations alleged by plaintiffs.

One relevant procedural issue which was completely ignored by both the District Court and the Third Circuit is the fact that Officer Martinez was not produced for sworn deposition testimony during pre-trial discovery based upon a medical report indicating that he was unable to provide deposition testimony. Thus, plaintiffs have been faced with the inability to question the Officer whose shot resulted in the death of Jelani. The key issue in this litigation is whether the use of deadly force by Officer Martinez was reasonable. The testimony of the three other officers at the scene directly contradicts the statement of Officer Martinez, a statement which has never been the subject of any cross-examination and which plaintiffs have never been given the opportunity

to challenge. This important fact was never addressed by either the District Court or the Third Circuit Court of Appeals. This, along with the issue of credibility, should have been presented to and resolved by a jury.

Despite the evidence presented by plaintiffs in opposition to defendants' Motions for Summary Judgment calling into question the reasonableness of the actions of the defendant police officers in using deadly force, the District Court granted the Motions without the benefit of oral argument by Amended Memorandum and Order dated August 13, 2008. Petitioners filed an appeal with the Third Circuit Court of Appeals pursuant to 28 U.S.C. § 1291. A three judge panel of the Third Circuit affirmed the District Court's grant of Summary Judgment on July 13, 2009. Petitioners now seek review by this Court of the dismissal of their claims under 42 U.S.C. § 1983.

REASONS FOR GRANTING THE PETITION

A. This Matter Poses A Question Of General Public Importance As It Relates To The Balancing Of The Constitutional Fourth Amendment Rights Of Mentally Distraught Individuals And A Police Officer's Obligation To Protect The Public.

This case involves an issue of gravity and general importance as it relates to the standards to be applied in pursuing and apprehending a mentally unstable person. This case presents a unique situation whereby the unreasonable actions of defendant police officers in the minutes leading up to the use of deadly force itself created the situation which resulted in the use of such

force. This case highlights the necessity for police training in how to pursue and apprehend an obviously mentally distraught individual so as not to escalate a situation which in turn prompts the "perceived need" to use deadly force. The balancing of an individual's Fourth Amendment Constitutional protection with the need for police officers to protect the public is certainly a matter of public importance and warrants the granting of this Petition.

B. The District Court And Third Circuit's Holdings Were A Miscarriage of Justice.

Numerous facts and factors do not support the rulings of both the District Court and Third Circuit. While it is acknowledged that this Court does not generally review concurrent findings of two lower Courts, this Court is not relieved of the task of examining the foundation for findings in a particular case. *Baumgartner v. United States*, 322 U.S. 665, 88 L.Ed. 1525, 64 S.Ct. 1240) (1944). Here, the findings of the Courts below as to the ultimate issue of deprivation of liberty were not based upon the facts and evidence presented. There was no doubt that when the defendant police officers first encountered the decedent, they were confronted with a mentally distraught individual. Despite freezing temperatures, Jelani was wearing only a T-shirt, sweatpants and socks (no shoes). While he was holding a knife, he had fresh wounds/slits on his own wrists. Jelani was not responding in any manner to the overlapping commands of the defendant police officers.

Despite the obvious mental condition of Jelani, the defendant police officers surrounded Jelani and closed

in on him to a distance of between 10 and 12 feet, contrary to the police department's policy and procedure of maintaining a distance of at least 21 feet from a suspect. Such actions undoubtedly precipitated the alleged perceived need for defendant police officers use of deadly force.

The actions of the defendant police officers in this action and the lower Court's preclusion of presenting these facts as to the fact-finder, the jury, have significant implications as to the broader issue of the need to review this type of matter so as to ensure that the constitutional guarantees of the Fourth Amendment against unreasonable seizure for mentally distraught individuals are fully protected and balanced with the need of police officers to protect the public at large.

This matter also presents a significant issue as to procedural due process as the lower Courts' rulings were based almost exclusively upon the self-serving accounts of the defendant police officers. Defendant, Officer Martinez, the officer who discharged the deadly shot was not produced for deposition in this litigation despite plaintiffs' properly filed and served notice to appear. Plaintiffs were precluded from obtaining the sworn deposition testimony of defendant Martinez due to an application of his counsel citing medical reasons which are subject to a confidentiality agreement. The only information provided by defendant Martinez as to his recollection of the actions of that evening was provided in rather scant statement provided to police investigators following the incident. Due to the inability to obtain the sworn testimony defendant Martinez, through no fault of the plaintiffs, plaintiffs have

essentially been denied due process to pursue and establish their claim against defendant Martinez. Fundamental fairness requires that a lower court consider this type of situation in ruling upon cases involving deadly force. As noted by several Courts faced with the situation where the only eyewitness testimony is provided by the police officer defendants, "courts should not simply accept what may be self-serving account by the police officer", *Scott v. Henrich*, 39 F.3d 912, 015 (9th Cir. 1992), but instead must carefully examine all of the evidence in the record to determine whether the officers' stories are internally consistent with other known facts. *Ibid.* citing *Hopkins v. Andaya*, 958 F.2d 881, 885-88 (9th Cir. 1992). Essentially, the court must "look at the circumstantial evidence that, if believed, would tend to discredit the police officer's story, and consider whether this evidence could convince a rational fact finder that the officer acted unreasonably." *Scott, supra* 39 F.3d 915.

Here, the matter is even more compelling as the plaintiffs have been precluded from deposing the actual defendant whose shot resulted in the death of Jelani. In essence, plaintiffs have been denied their fundamental right to obtain the sworn testimony of the defendant officer who fired the deadly shot.

CONCLUSION

For all of the foregoing reasons, petitioners respectfully request that the Supreme Court grant review of this matter.

Respectfully submitted,

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APPENDIX

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT FILED JULY 13, 2009

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 08-3810

CAROL MANIGAULT, Individually and as Administratix ad Prosequendum and General Administratix of the Estate of Jelani Darren Manigault, Deceased; ANDREW MANIGAULT, Individually and as parents and Natural Guardians of Jelani Darren Manigault,

Appellants

v.

CHRISTOPHER KING; HARRY MARTINEZ; FRED WILLIAMS; JUDD PETRONE; TOWNSHIP OF PRINCETON; PRINCETON TOWNSHIP POLICE DEPARTMENT; JOHN AND JANE DOES 1-10; ABC CORP. 1-10; XYZ ENTITIES 1-10.

Appeal from the United States District Court for the District of New Jersey
(D.C. Civil Action No. 3-05-cv-00422)
District Judge: Honorable Anne E. Thompson.

Submitted Under Third Circuit LAR 34.1(a)
July 10, 2009

Appendix A

Before: SLOVITER, AMBRO, and JORDAN, *Circuit Judges.*

(Opinion Filed July 13, 2009)

OPINION

AMBRO, *Circuit Judge.*

In this tragic case, Princeton Township Police Officers fatally shot Jelani Manigault while attempting to arrest him. Manigault's parents, Carol and Andrew, brought this action under 42 U.S.C. § 1983, asserting that the officers used excessive force and approached their son in a manner that violated his Fourth Amendment rights. The District Court granted summary judgment in favor of the officers, ruling that they were entitled to qualified immunity. We affirm.

I.

In the early hours of January 23, 2003, the Princeton Township Police received an emergency call from Mrs. Martha Sword. She informed them that an intruder had entered her home and was attacking her husband and brother. The intruder, Manigault, had crashed his car into a tree on the Sword's property and entered to their home when Mr. Sword opened the door to see if Manigault needed help. Once inside, Manigault, who was wearing no jacket or shoes, grabbed a knife from the kitchen and began stabbing Mr. Sword. Mrs. Sword's brother, Robert Sullivan, came to Mr. Sword's aid and

helped him force Manigault outside. Manigault, however, reentered the house, regained control of the knife, and began slitting his wrists. At this point, Sullivan forced him back outside and secured the doors.

Officers Judd Petrone and Harry Martinez arrived at the driveway of the Sword's home about the same time that Sullivan managed to lock Manigault outside. After inspecting Manigault's crashed car, the officers began walking toward the Sword's home. Meanwhile, Officers Fred Williams and Christopher King arrived and followed Petrone and Martinez up the Sword's driveway.

Officer Martinez was the first to spot Manigault. He ordered him to "drop the knife," and pursued him into the Sword's densely wooded yard. The other officers hurried to join Martinez and encircle Manigault. Relying on their flashlights for light, the officers continuously commanded Manigault, who was covered in blood, to drop his knife.

After some time, Manigault turned his back to the officers. Thinking that he was submitting, Officers Martinez and Petrone began to approach him. As they closed to within fifteen feet, however, Manigault spun around, faced Officer King, and stated, "Go ahead and kill me" or "You're going to have to kill me." He then charged King with the knife. Backing up, King tripped on a tree stump and fell to the ground. As Manigault continued his charge, King fired his gun.

Hit with King's bullet, Manigault bent from the waist and turned toward Martinez with knife in hand. At this point, King was prepared to fire more shots but lost sight of Manigault, and Petrone was prevented from firing because Martinez was in his line-of-fire. Martinez then fired two quick shots at "almost the exact same time" as King's shot. One of these shots killed Manigault.

Manigault's parents filed this suit against the officers, Township, and other entities, alleging, among other things, a § 1983 claim stemming from the officers' asserted use of excessive force and unreasonable actions. The officers moved for summary judgment, arguing that they were entitled to qualified immunity. The District Court granted the motion. *See Manigault v. King*, No. 05-0422, 2008 WL 3887609, at *5-6 (D.N.J. Aug. 21, 2008). The Manigaults appealed.

II.

The District Court had jurisdiction under 28 U.S.C. § 1331. We have jurisdiction under 28 U.S.C. § 1291.

Our review of the District Court's grant of summary judgment is plenary, "but we must view the facts in the light most favorable to the non-moving party." *Fontroy v. Beard*, 559 F.3d 173, 177 (3d Cir. 2009). Summary judgment is appropriate when no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).

Appendix A

III.

Manigault's parents argue that we should vacate the District Court's grant of summary judgment because the Township officers used deadly force and unreasonably approached their son in violation of his Fourth Amendment rights.[1] The officers respond that they are entitled to summary judgment based on qualified immunity because their actions were objectively reasonable under the circumstances.

Qualified immunity shields government officials from civil damages liability "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Under *Saucier v. Katz*, we typically resolve qualified immunity claims under a two-step test, deciding (1) whether facts alleged or shown make out the violation of a constitutional right, and (2) if so, whether that right was clearly established at the time of the defendant's misconduct. 533 U.S. 194, 201 (2001). The Supreme Court, however, held in *Pearson v. Callahan* that "courts of appeals should be permitted to exercise their sound discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at

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1. On appeal, the Manigaults do not press any of their previously raised state claims or their § 1983 claim against the Township and other entities. These claims are thus waived. *See Kopec v. Tate*, 361 F.3d 772, 775 n. 5 (3d Cir. 2004).

hand." *Pearson*, __ U.S. __, 129 S.Ct. 808, 818 (2009). The District Court's decision, rendered before *Pearson*, addressed the first step-whether the Township officers' use of deadly force was unconstitutional. We see no reason, post- *Pearson*, to alter that approach here.

A police officer's use of deadly force is permissible only if it is objectively reasonable under the circumstances. *See Graham v. Connor*, 490 U.S. 386, 399 (1989). Assessing the reasonableness of an officer's use of deadly force requires careful attention to "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officer or others, . . . whether he is actively resisting arrest or attempting to evade arrest by flight, . . . the duration of the officer's action, . . . the possibility that the suspect may be armed, and the number of persons with whom the police officers must contend at one time." *Couden v. Duffy*, 446 F.3d 483, 496-97 (3d Cir.2006) (internal citations omitted).

Viewing the facts in the light most favorable to the Manigaults, we conclude, as the District Court did, that the Township officers' use of deadly force was objectively reasonable under the circumstances. At the time he was shot, Manigault had stabbed a man and invaded a home. He was covered in blood, armed with a deadly weapon, did not respond to commands, and was in the process of lunging at an officer who had fallen to the ground. To be sure, Manigault's lack of a jacket or shoes and slit wrists may have given the officers some indication that he was mentally unwell, but given the darkness of the scene and brief time period in which it unfolded, these

indicators could not control the officers' actions. Moreover, the fact that Manigault bent from the waist and turned after King's bullet struck him did not make it unreasonable for Martinez to fire his weapon at a nearly simultaneous time. Thus, no genuine issues of material fact exist over whether the officers used deadly force in an objectively unreasonable manner.

In addition, the Manigaults' claim that the officers approached their son in a way that violated his Fourth Amendment rights must fail. Although the officers were trained to maintain a distance of at least 21 feet when facing a suspect carrying a knife, their abandonment of this protocol cannot form the basis for a remedy under § 1983 or deprive them of qualified immunity. *See Collins v.. City of Harker Heights,* 503 U.S. 115, 119 (1992) (holding that § 1983 does not provide a remedy if there is no violation of federal law); *Davis v. Scherer,* 468 U.S. 183, 194 (1984) (noting that officials do not lose qualified immunity where they violate administrative directives). Furthermore, under the circumstances, it was reasonable for Martinez and Petrone to approach Manigault, who had turned his back on them and appeared to be submitting to their commands.

* * *

For these reasons, we affirm the District Court's grant of summary judgment.

APPENDIX B — AMENDED MEMORANDUM AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY FILED AUGUST 21, 2008

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil No. 05-0422 (AET)

CAROL MANIGAULT, Individually and as Administratix ad Prosequendum and General Administratix of the Estate of Jelani Darren Manigault, deceased, et al.,

Plaintiffs,

v.

CHRISTOPHER KING, et al.,

Defendants.

AMENDED MEMORANDUM & ORDER

THOMPSON, District Judge.

This matter is before the Court upon Defendants Christopher King, Fred Williams, Judd Petrone, Township of Princeton, and Princeton Township Police Department's[1] Motion for Summary Judgment, and

1. The Court notes that, in New Jersey, a municipal police department is not distinct from the municipality, N.J. Stat. Ann

(Cont'd)

Defendant Harry Martinez's (collectively, "Defendants") Motion for Summary Judgment. The Court has decided these Motions based upon the submissions of the parties and without oral argument pursuant to Fed.R.Civ.P. 78. For the reasons set forth below, Defendants' Motions are granted.

BACKGROUND

Plaintiffs Carol Manigault and Andrew Manigault bring this action following the shooting death of their son, Jelani Manigault ("Decedent"), by Princeton Township Police Officers Christopher King, Patrolman Harry Martinez, Sergeant Judd Petrone, and Fred Williams (the "Officer Defendants"). In addition, Plaintiff Carol Manigault brings claims in her capacity as Administratix of Decedent's Estate. Plaintiff Carol Manigault is a resident of New Jersey, while Plaintiff Andrew Manigault is a resident of South Carolina. The Officer Defendants are residents of New Jersey. Defendant Township of Princeton ("Princeton") is a municipal corporation organized under New Jersey law, and is located in Mercer County, New Jersey. Defendant Princeton employs the Officer Defendants.

(Cont'd)

§ 40A:14-118, and, therefore, the Princeton Township Police Department is not a proper defendant here. Thus, all claims against Princeton Township Police Department are dismissed. *See Bonenberger v. Plymouth Twp.*, 132 F.3d 20, 25 n. 4 (3d Cir.1997) (treating the municipality and its police department as a single entity for purposes of claims brought under 42 U.S.C. § 1983).

Appendix B

On January 23, 2003, Decedent was shot to death by the Officer Defendants. Plaintiffs had been concerned about erratic behavior exhibited by Decedent in the preceding days, and, following an interview with a psychiatrist at the Princeton Medical Center the day before Decedent's death, Plaintiffs, Decedent, and Decedent's girlfriend, Jennifer Arroyo, stayed overnight in a guest cottage at Tenacre, a Christian Science facility located in Princeton. (Goldstein Cert., Ex. B (Carol Manigault Dep.), at 86:19-23; 94:18-21.)

In the early morning hours of January 23, 2003, Decedent left the guest cottage, wearing only a t-shirt and sweatpants, and no shoes, despite freezing temperatures, and refused to heed his parents' and girlfriend's attempts to prevent him from leaving. (*Id.*, at 142:9-16; 143:4-7.) Decedent drove Plaintiff Carol Manigault's car out of Tenacre, and a short while later, crashed the vehicle on Great Road. Decedent exited the car, and walked by foot to 1036 Great Road, the residence of Martha and William Sword. (Goldstein Cert., Ex. G (New Jersey Police Accident Report.)) Around 1:45 a.m., Mrs. Sword was awakened by the barking of her dogs, and heard the doorbell ring. (Goldstein Cert., Ex. J (Martha Sword Dep.) at 8:9-11 .) She and Mr. Sword went to the front door, where Mrs. Sword saw Decedent. (*Id.*, at 9:9-10.) Concerned, Mr. Sword opened the front door. Decedent pushed past Mr. Sword, and headed straight for a room known as the "mudroom," adjacent to the kitchen. (*Id.*, 9:11-21.) Decedent appeared agitated as he walked into the kitchen and began rummaging through the drawers. Decedent removed an

eight-inch knife, and came at Mr. Sword with the knife. Mrs. Sword screamed, and told her brother, Robert Sullivan, who was staying overnight as a guest, to come downstairs without getting dressed. (Defs.' Statement of Material Facts, ¶ 42.) Decedent stabbed Mr. Sword approximately fourteen times, resulting in a punctured lung, broken ribs, and knife wounds to Mr. Sword's chest, back, right arm, left shoulder, and left hand. (*Id.*, ¶ 43.) Mr. Sullivan, witnessing the stabbing, came up behind Decedent, put his right forearm around Decedent's throat, and lifted Decedent off of his feet. (*Id.*, ¶ 44.)

Mrs. Sword called 911, and informed the operator that an intruder was in their home, had stabbed her husband, and that her brother and husband were fighting back against the intruder. (*Id.*, ¶ 45.) Mr. Sullivan managed to subdue Decedent by hitting him over the head with a frying pan a couple of times, and tried to administer aid to Mr. Sword. (Goldstein Cert., Ex. K (Robert Sullivan Dep.), at 15:1-17:22.) However, Mr. Sullivan noticed that Decedent was back on his feet, in the kitchen, and had slit his own wrists. (*Id* ., at 17:4-22.) Mr. Sullivan managed to let Decedent out of the house, set the knife on the kitchen counter, and began to lock the doors to the house. However, he subsequently returned to the kitchen to discover that he had not secured the door properly, and Decedent had reentered the house, and had once again cut his wrists with the knife. Decedent then exited the home with the knife in his hand. (Defs.' Statement of Material Facts, ¶¶ 55-57.)

Appendix B

Defendant Petrone responded to a dispatch that a black male intruder had a knife and was stabbing someone inside the home at 1036 Great Road. (Goldstein Cert., Ex. L (Petrone Dep.) at 30:6-19.) On his way, he heard a second update that the intruder had been subdued on the kitchen floor. (*Id.*, at 30:24-31:4.) Defendant Petrone arrived around the same time as Defendant Martinez, and as they were trying to locate the home in the dark, Defendant Petrone was flagged by a couple who alerted him to a crashed vehicle, but knew nothing of the stabbing incident to which Defendant Petrone was responding. (Defs.' Statement of Material Facts, ¶¶ 63-65.) Defendant Martinez exited his car, and cleared the crash vehicle to ensure that no one was in there. (*Id* ., ¶ 67.) Meanwhile, Defendant Petrone received an update that the intruder was now outside the Swords' home and was coming down the driveway. (Goldstein Cert., Ex. L at 31:7-9.) Defendant Martinez began walking up the driveway, approximately thirty feet ahead of Defendant Petrone, when Defendants Williams and King arrived, having heard the same dispatch updates as Defendant Petrone. (*Id.*, Ex. L at 38:19-25; Ex. M (King Dep.) at 57:11-57:24). Defendant Williams approached the crashed vehicle.

Defendant Martinez then spotted Decedent, and started to run towards him, yelling, "Drop the knife, police. Drop the knife." Defendants Petrone and King followed in pursuit. (*Id.*, Ex. L at 39:15-18; 40:19-23; Ex. M at 63:9-18.) The Swords' yard was unkempt, with stones and trees everywhere, and was not lit. (*Id.*, Ex. M at 63:23-64:4.) When Defendant Petrone first

saw Decedent, he was approximately thirty feet away, and had illuminated Decedent with his flashlight. At this point, Defendant Petrone had drawn his gun and was holding it in his right hand. Decedent had blood on his clothing, and was holding the bloody knife with his right hand at the level of his head. (*Id.*, Ex. L at 40:16-41:6; 71:11-14; Defs.' Statement of Material Facts, ¶ 80.)

Defendant Petrone was situated to Decedent's left, and Defendant Martinez was to the right of Defendant Petrone. (Goldstein Cert., Ex. L at 41:13-16.) They continued to command Decedent to drop his knife, and, at one point, Decedent turned his back to both Defendants Petrone and Martinez. (Defs.' Statement of Material Facts, ¶ 86.) Believing that Decedent was going to obey their commands, Defendants Petrone and Martinez closed the distance to within ten to fifteen feet of Decedent in order to subdue him. (Vladyka Cert., Ex. C (Petrone Dep.) at 45:24-46:2.) Defendant King approached, and positioned himself between Defendants Petrone and Martinez. Defendant King estimated that, at this point, the officers were approximately twenty feet away from Decedent. (Goldstein Cert., Ex. M at 70:13-17.) Police officers are trained to maintain a distance of approximately twenty-one (21) feet away from a suspect with a knife, both to protect the officer's safety, and to allow the officer time to assess the threat posed by the knife, and to respond with force. (Defs.' Statement of Material Facts, ¶¶ 90-92.)

Appendix B

Instead of complying with Defendants' commands to drop his knife, Decedent turned around, and stopped, facing Defendant King. Decedent then either said, "Go ahead and kill me," or "You're going to have to kill me," and charged with the knife towards Defendant King. (Goldstein Cert., Ex. M at 72:19-25.) Defendant King began backing up, but tripped on a tree stump behind him, and fell and landed on his buttocks and lower back in a seated position. He kept his head up, and raised one of his feet, and yelled at Decedent to stop. (Defs.' Statement of Material Facts, ¶¶ 96-97.) Decedent continued moving towards Defendant King, and was approximately six feet away when Defendant King fired his gun, hitting Decedent in the pelvic region. (Goldstein Cert., Ex. M at 78:10; Defs.' Statement of Material Facts, ¶¶ 99-100.)

At this point, the parties dispute what exactly happened next. Defendant King was prepared to fire additional shots, but lost sight of Decedent after he was hit with Defendant King's bullet. (Goldstein Cert., Ex. M at 79:17-80:3.) According to Defendant King, Decedent's head lowered, and he surmised that the downward movement actually came from Decedent's waist. (Vladyka Cert., Ex. D (King Dep.) at 80:13-16; 81:13-20; 82:14-24.) After Defendant King's shot, Defendant Petrone observed Decedent turn towards Defendant Martinez, still holding the knife, but also saw that Decedent was "stopped in his tracks." (*Id.*, Ex. C at 51:14-25; 81:20-25.) Defendant Martinez then fired two quick shots in succession. One of the two shots struck

Decedent's head, and proved to be fatal. The time between Defendant King's first shot and Defendant Martinez's second and third shots was estimated to be "almost the exact same time." (*Id.*, Ex. D at 82:2-13; *see also* Ex. C at 53:13-21.) Defendant King then removed the knife from Decedent's hand, and could not discern any signs of life. (Goldstein Cert., Ex. M at 87:6-88:2.) Defendant Petrone made arrangements to secure the area, and instructed Defendant Martinez to check the situation inside the Swords' home, and told Defendant Williams to secure the end of the driveway. (Defs.' Statement of Material Facts, ¶ 106.)

While these events were unfolding, Plaintiffs and Ms. Arroyo waited at the end of the driveway. (*Id.*, ¶ 111.) Plaintiff Carol Manigault saw a body being lifted onto a gurney after emergency medical technicians arrived, and knew "in her heart of hearts" that it was her son. (Vladyka Cert., Ex. A (Carol Manigault Dep.) at 157:4-12.) However, the next morning, Plaintiffs and Ms. Arroyo went to the police station to locate their son, and Plaintiff Carol Manigault testified that she "put two and two together" and determined that her son had died when a detective told her that an African American male had been killed the previous night. (Goldstein Cert., Ex. B at 159:3-11.)

Plaintiffs filed a Complaint against Defendants alleging the following claims: (1) wrongful death; (2) respondeat superior against Defendant Princeton for the actions of its officers; (3) negligent hiring,

training, and retention against Defendant Princeton;[2] (4) survivorship; (5) negligent infliction of emotional distress; (6) loss of services; (7) violations of 42 U.S.C. § 1983, alleging that Defendants' actions constituted an unreasonable seizure and excessive force, and violated Decedent's due process and equal protection rights; and (8) Defendant Princeton acted negligently in keeping Plaintiffs away from their son after he had been shot. Defendants now move for summary judgment on all claims.

DISCUSSION

A. Standard of Review

Summary judgment is appropriate if, on the record, "there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); *Kreschollek v. S. Stevedoring Co.*, 223 F.3d 202, 204 (3d Cir.2000). In deciding whether summary judgment should be granted, the Court considers "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits," and construes all facts and inferences in the light most favorable to the nonmoving party. Fed.R.Civ.P. 56(c); *see also Curley v. Klem*, 298 F.3d 271, 276-77 (3d Cir.2002). To survive a

2. In their Opposition papers, Plaintiffs concede the negligent hiring claim. Accordingly, summary judgment is granted for Defendants on this count.

motion for summary judgment, a plaintiff cannot rely merely on the unsupported allegations of the complaint, and must present more than the "mere existence of a scintilla of evidence" in his favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

B. Excessive Force Claim

Defendants first argue that they are entitled to qualified immunity on Plaintiffs' § 1983 claim, because Plaintiffs cannot establish that Defendants violated Decedent's Fourth Amendment rights to be free from an unreasonable seizure and excessive force, contending that Defendants' use of deadly force against Decedent was objectively reasonable in light of the attendant circumstances of the situation they faced. Plaintiffs argue that the use of deadly force was unreasonable and excessive, because Defendants Petrone and Martinez unnecessarily created a situation where such force would have to be used by maintaining a distance of less than 21 feet between themselves and Decedent. Further, Plaintiffs contend that Defendant Martinez employed excessive force in firing two shots, including the fatal one, at Decedent, asserting that the record shows that Decedent no longer posed a threat to Defendants after he was hit by Defendant King's shot. The Court notes that Plaintiffs have not opposed Defendants' Motions on the due process and equal protection portions of their § 1983 claims, nor have Plaintiffs opposed Defendant Princeton's motion for summary judgment on the § 1983 claim. The Court has not found anything in the record

that creates a factual dispute that would warrant a denial of summary judgment on these grounds. Thus, the Court only considers the viability of Plaintiffs' Fourth Amendment claims against the Officer Defendants.

The use of excessive force by law enforcement officers constitutes an unreasonable seizure within the meaning of the Fourth Amendment. *Carswell v. Borough of Homestead*, 381 F.3d 235, 240 (3d Cir.2004). Excessive force claims are analyzed according to an objective reasonableness standard. *Sharrar*, 128 F.3d 810, 820 (3d Cir.1997). A court must consider the totality of circumstances, and factors a court may take into account include "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Id.* at 821-22. Also informative to the court's analysis is consideration of "the possibility that the persons subject to the police action are violent or dangerous, the duration of the action, whether the action takes place in the context of effecting an arrest, the possibility that the suspect may be armed, and the number of persons with whom the police officers must contend at one time." *Kopec v. Tate*, 361 F.3d 772, 777 (3d Cir.2004).

Here, construing the facts in the light most favorable to Plaintiffs, the Court concludes that the Officer Defendants' actions were objectively reasonable. The Officer Defendants, responding to a 911 call that an intruder had stabbed someone inside the Swords' residence, and having received dispatch updates informing

them that the intruder had subsequently left the home, encountered Decedent in the yard of the Swords' home. It was dark, and the only light came from the Officer Defendants' flashlights. The Officer Defendants saw that Decedent's clothes were stained with blood, and that he was holding a knife in his right hand at the level of his head. Decedent apparently ignored the Officer Defendants' repeated commands that he drop his knife, and after turning his back to them, abruptly turned around and began to charge towards Defendant King. In response, Defendant King backed away, but tripped over a tree stump. Decedent continued to advance, and Defendant King fired his gun when Decedent was approximately six feet away, knife still in hand. Defendant Martinez fired both of his shots at Decedent almost instantaneously. Plaintiffs argue that Defendant Petrone's testimony established that Decedent was "frozen in his tracks" following the first shot, and, therefore, no longer posed a threat to any of the officers. However, Defendant Petrone also testified during his deposition that Decedent turned in the direction of Defendant Martinez after being struck by the first bullet, and that, in that moment, Defendant Martinez faced an armed assailant who had stabbed a homeowner, and was trying to attack his fellow officers. Further, the Court is mindful that its "recitation of these events is a discussion in slow motion of an incident that took place in a matter of seconds." *Carswell*, 381 F.3d at 243. In these circumstances, the Court cannot find that the Officer Defendants' use of force was unreasonable.

Plaintiffs also contend that Defendants Petrone and Martinez acted unreasonably by closing the gap between

Decedent and them to within ten to fifteen feet, despite being trained to maintain a distance of at least 21 feet when facing a suspect carrying a knife. This, Plaintiffs contend, created a situation where Defendants unnecessarily used deadly force in order to subdue the threat posed by Decedent. However, Defendant Petrone testified that the officers approached Decedent after he turned his back, and after the Officer Defendants had instructed him to drop his knife. The Court concludes that a reasonable officer could have construed Decedent's actions at that moment as unaggressive, and, thus, the Court does not find that Defendants Petrone and Martinez acted unreasonably in moving closer in order to attempt to subdue Decedent.

Having found no constitutional violation, the Court grants the Officer Defendants' Motions for Summary Judgment on Plaintiffs' § 1983 claim.

C. State Law Claims

Having granted summary judgment in favor of Defendants on Plaintiffs' sole federal claim, and there being no diversity jurisdiction, the Court declines to exercise supplemental jurisdiction over Plaintiffs' state law claims. 28 U.S.C. § 1367(c) (3). Accordingly, Plaintiffs' state claims are dismissed.

D. John Doe Defendants

According to Fed.R.Civ.P. 21, "parties may be dropped . . . by order of the court . . . of its own initiative at any

stage of the action and on such terms as are just." Fed.R.Civ.P. 21. A court may drop John Doe defendants pursuant to this Rule. *See, e.g., Adams v. City of Camden*, 461 F.Supp.2d 263, 271 (D.N.J.2006) (citing cases). Therefore, the Court exercises its discretion under Fed.R.Civ.P. 21 to dismiss the John Doe defendants from this action because Plaintiffs have not identified these defendants or provided any basis of their liability with respect to the incident that gives rise to this action.

CONCLUSION

For the foregoing reasons, and for good cause shown,

IT IS on this 13th day of August, 2008,

ORDERED that Defendants Christopher King, Fred Williams, Judd Petrone, Township of Princeton, and Princeton Township Police Department's Motion for Summary Judgment is GRANTED; and it is further

ORDERED that Defendant Harry Martinez's Motion for Summary Judgment is GRANTED; and it is further

ORDERED that this case is closed.

s/ Anne E. Thompson
ANNE E. THOMPSON, U.S.D.J.

(3)

No. 09-417

SUPREME COURT, U.S.
FILED
DEC 3 - 2009

IN THE

Supreme Court of the United States

CAROL MANIGAULT, Individually and as Administratrix ad Prosequendum and General Administratrix of the Estate of Jelani Darren Manigault, Deceased, and CAROL MANIGAULT and ANDREW MANIGAULT, Individually and as Parents and Natural Guardian of Jelani Darren Manigault,

Petitioners,

v.

CHRISTOPHER KING, HARRY MARTINEZ, FRED WILLIAMS, JUDD PETRONE, TOWNSHIP OF PRINCETON, MERCER COUNTY, STATE OF NEW JERSEY, PRINCETON TOWNSHIP POLICE DEPARTMENT, PRINCETON TOWNSHIP, JOHN/JANE DOES 1-10; ABC CORP. 1-10 AND/OR XYZ ENTITIES 1-10,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENT HARRY MARTINEZ

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QUESTION PRESENTED

Did the Third Circuit err when it determined that given the particular circumstances presented to Harry Martinez on the date of the subject incident, which included an armed and dangerous suspect who was in the process of lunging at a fellow Officer, and viewing the facts in the light most favorable to the Petitioners, the use of deadly force was objectively reasonable and thus not violative of the Fourth Amendment.

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INTRODUCTION

The petition for certiorari does not raise any question that warrants review by this Court. The Third Circuit's decision does not conflict with the decision of any other court of appeals. Nor does it conflict with any decision of this Court. Moreover, the petition utterly fails to identify an important unresolved question of federal law that needs to be decided by this Court. Rather, the petition is premised solely upon what Petitioners perceive as error in the weight given by the two lower courts to the clothing worn by Jelani Manigault on the night in question and the distance the Officers maintained from Jelani in their efforts to apprehend him.

In reviewing whether the District Court properly granted summary judgment in favor of Defendants, the Third Circuit paid careful attention to the facts of this case, correctly recognizing that the time period over which the events transpired was swift and exigent. The Defendant Officers were confronted in the middle of the night with a suspect who was armed with a deadly weapon, who did not respond to their repeated commands, had previously stabbed another individual just prior to the Officers' arrival, and who was in the process of lunging at another Officer with the apparent intent to inflict either grievous bodily harm and/or kill him. Measured against this factual backdrop, the Third Circuit's sound determination that the Officers' conduct was objectively reasonable does not warrant second thought.

Lacking any case law conflict or other viable argument for review, Petitioners misstate the impact of Jelani Manigault's clothing to support an implausible claim that the Third Circuit articulated a holding that threatens a "miscarriage of justice" based on an asserted error of factual findings. (Pet. at 6). In reality, the Third Circuit broke no new ground and, in fact, simply applied a "totality of the circumstances" test, reasoning that the Officers' use of deadly force was objectively reasonable given the precarious situation which they confronted. This holding was premised on the well-established principle handed down by this Court in *Tennessee v. Garner*, 471 U.S. 1 (1985), which emphasizes that "the use of deadly force in effecting an arrest is constitutional when the officer has probable cause to believe that the suspect poses a threat to the officer." *Id.* at 11-12, 105 S.Ct., at 1701-1702.

Because the decision of the Third Circuit Court of Appeals is correct and there is no mature conflict in the courts of appeals, this Court's review is not warranted. Thus, the Petition should be denied.

COUNTER-STATEMENT OF THE CASE

Carol and Andrew Manigault (hereinafter "Petitioners") appeal from an Order entered by the United States Court of Appeals for the Third Circuit affirming the District Court's grant of summary judgment in favor of Defendants in this action brought, *inter alia*, under 42 U.S.C. § 1983 ("Section 1983") for various alleged deprivations of Jelani Manigault's Constitutional rights. (Petitioner's Appendix A). More specifically, Petitioners allege that the shooting of Jelani

Manigault violated the Fourth Amendment's guarantee against unreasonable seizures insofar as it constituted a "seizure" of Jelani's person through the use of excessive force.

There is no genuine dispute in this case about the relevant historical facts, and the record evidence clearly establishes four central realities which the Petitioners do not deny or controvert. First, the Officers confronted Jelani Manigault in the middle of the night in an area cloaked in pitch darkness, where the only available light source came from the Officers' own flashlights. Second, Jelani was armed with a bloody knife which he had used to repeatedly stab Mr. Sword just moments prior to the Officers' arrival. Third, Jelani was completely unresponsive to the Officers' commands to drop his weapon. Finally, at the time that Jelani was shot, he was in the process of lunging at Officer King who was laying on the ground, knife still in hand, and the three shots which were fired to counter Jelani's armed attack upon Officer King were discharged in rapid succession, if not virtually simultaneously.

The Petition for Certiorari conveys the impression that the Third Circuit upheld a decision which neglected to take into consideration Jelani Manigault's purported "mental disturbance" and suggests, if a suggestion it is, that law enforcement officials should be forbidden from employing deadly force in an effort to protect themselves, as well as innocent bystanders, from the threat of serious bodily harm and/or imminent death at the hands of an armed assailant based on esoteric indicators of mental distress. That is a false impression. The petition omits key details about the nature of the

events that transpired outside of the Swords' residence, as well as the conduct of Jelani Manigault. The petition also misstates the issues raised below and preserved for review, as well as the findings of the Third Circuit's decision.

The Constitutional question presented herein is governed by the principles enunciated in *Tennessee v. Garner*, 471 U.S. 1 (1985) and *Graham v. Connor*, 490 U.S. 386 (1989). These cases establish that claims of excessive force are to be judged under the Fourth Amendment's "objective reasonableness" standard. *Graham*, 490 U.S. at 388. Specifically, in *Graham*, the Supreme Court held "that all claims that law enforcement officers have used excessive force-deadly or not-in the course of an arrest, investigation stop, or other 'seizure' of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' standard, rather than under a 'substantive due process' approach." 490 U.S. at 395.

Furthermore, for liability to attach, the right alleged to have been violated "must have been 'clearly established' in a more particularized, and hence more relevant, sense." *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). If the law is not established clearly when an official acts, he is entitled to qualified immunity because he "could not reasonably be expected to anticipate subsequent legal developments, nor could he fairly be said to 'know' that the law forbade conduct not previously identified as unlawful." *Siegert v. Gilley*, 500 U.S. 226, 232 (1991).

Guided by these fundamental principles, the lower courts correctly ruled that there was no Constitutional violation, as the totality of circumstances was such that Officer Martinez and his fellow Officers were confronted in the darkness with a suspect brandishing a bloody knife who was consciously disregarding the Officers' repeated pleas to stop and drop his weapon. The encounter was then brought swiftly to a head, becoming confrontational only because Jelani chose to make it so by first, stabbing William Sword, and later charging at Officer King with a knife. In response, Officers King and Martinez discharged a rapid sequence of three bullets within a two to three second window, at most, that ceased once Jelani fell to the ground.

These seconds are critical on appeal because Petitioners erroneously see them as unfolding only one way—in slow motion. Notwithstanding this interpretation, this is a prototypical case where the Officers, faced with an armed and dangerous suspect, were forced to make split-second judgments in the heat of the moment. Even if their assessment of the threat was mistaken, it was not unreasonable, as they were forced to assess the situation in the midst of rapidly evolving events in an environment of extreme tension. Therefore, the District Court's and the Third Circuit's conclusions that Officer Martinez is entitled to judgment as a matter of law must stand.

A. Factual Background:

On January 23, 2003, the Princeton Township Police Department received a 911 emergency call from a panicked Mrs. Martha Sullivan Sword, reporting that an intruder had entered her home. She further reported that her husband had been stabbed and that he and

her brother were engaged in a struggle to defend against the intruder. Prior thereto, Mrs. Sword was awoken by the sound of her dogs barking. As she was getting up, she heard the doorbell ringing. Mrs. Sword woke her husband, William Sword and informed him that someone was at the door. They went downstairs together to see who was at the door. Turning on the outside light, they observed Jelani Manigault standing outside the door. As Mr. Sword opened the door, asking if Jelani needed help, Jelani pushed past them and entered the home.

As he walked toward the kitchen, Jelani became very agitated and began to act erratically, proceeding to rummage through the kitchen drawers and grabbing an eight (8) inch knife. Without provocation, Jelani brutally attacked Mr. Sword, stabbing him fourteen (14) times in total and inflicting eight (8) major wounds. Screaming, Mrs. Sword ran upstairs to get her brother, Robert Sullivan.

Mr. Sullivan ran downstairs and began to struggle with Jelani in an attempt to aid Mr. Sword, who was covered in blood. Mr. Sullivan put his arm around Jelani's throat and lifted him back off his feet. When Mr. Sword was freed from Jelani, he grabbed a frying pan and hit Jelani on the head, temporarily knocking him out. When Jelani came to, he once again had the knife in his possession. Mr. Sword approached Jelani from behind and hit him on the head with the pan again.

Somehow Mr. Sullivan was able to usher Jelani outside. As it turned out, Mr. Sullivan had not locked the door properly and Jelani re-entered the kitchen with

the knife in his possession again. As Jelani began to cut himself, Mr. Sullivan began to scream at him to get out of the house as loud as he could. Subsequently, Jelani walked outside with the bloody knife still in his hand.

Police Officers Christopher King, Harry Martinez, Frederick Williams and Judd Petrone arrived at the scene in response the 911 call within minutes of each other. Upon their arrival, they received a second update via radio indicating that the male intruder had left the house and was coming down the driveway. The area surrounding the home was cloaked in darkness and, unbeknownst to the Officers, the lawn was unkempt, the terrain was uneven and the ground was spotted with protruding tree trunks.

When Sgt. Petrone first observed Jelani, he was approximately 30 feet away. Sgt. Petrone illuminated Jelani with his flashlight as it was totally pitch dark. He positioned himself to the left of Jelani who was covered in blood, holding a knife up at head level in his right hand. Officer Martinez was positioned on his right.

At this time, Officer King began to run across the yard toward Officers Petrone and Martinez. As he approached, he could hear the Officers repeatedly pleading for Jelani to drop the knife. Officer King took up position approximately 20 feet away from Jelani, equidistant from Officers Martinez and Petrone, but in between them. As Officer King was closing his distance from 30 feet to 20 feet, he could hear Officer Martinez repeating his commands. Jelani's hands were both raised above his head and he was pivoting, eventually coming to a stop facing Officer King.

They continued to plead with Jelani to drop his weapon to no avail. Suddenly and without warning, Jelani broke into a run toward Officer King. Right before Jelani began his charge toward Officer King, Officer King overheard him say "go ahead and kill me," or "you're going to have to kill me." Sgt. Petrone looked to get a shot at Jelani but was unable to because Officer Martinez was in the line of fire.

Officer King began to retreat backwards but tripped over a protruding tree stump, falling to the ground. As Jelani approached, Officer King shouted for him to "stop." Realizing that Jelani was not complying and fearing for his life, Officer King discharged his weapon once. Jelani then "made a turn almost like he wasn't phased or hit. He just made a turn toward another threat . . . Still standing with the knife up . . ."

Instantaneously, Officer Martinez fired two shots at Jelani who was now facing his direction. Officer King testified that he and Officer Martinez fired their weapons almost at the same time and that the time between the first and second shots was "well under a second . . . a second wouldn't even be close, it was almost the exact same time." As Officer Williams put it, "[a]s the first shot was fired, the shots that came after them happened so quickly."

B. Proceedings Below

By way of Amended Memorandum and Order dated August 13, 2008, the District Court, Honorable Anne E. Thompson, U.S.D.J., granted summary judgment as to all Defendants on the Section 1983 claim. (Petitioner's

Appendix B). The District Court found that the following material facts had been established: (1) the Officers responded to a 911 call that an intruder had stabbed someone inside the Sword's residence; (2) the Officers encountered Decedent in the front yard of the Sword's home; (3) it was dark and the only light came from the Officers' flashlights; (4) Decedent's clothes were blood-stained and he was holding a knife at the level of his head; (5) Decedent ignored the Officers' repeated commands; (6) Decedent abruptly began to charge towards Officer King who tripped over a tree stump; (7) Decedent continued to advance and Officer King fired his gun while Decedent was approximately 6 feet away, knife still in hand; (8) almost instantaneously, Officer Martinez fired two shots at Decedent. Viewing this evidence in the light most favorable to the Manigaults, drawing all justifiable inferences in their favor, and considering the controlling law, the District Court determined that the Officers' use of force was reasonable.

The United States Court of Appeals for the Third Circuit, Judges Sloviter, Ambro and Jordan, upheld the District Court's decision, reasoning that the Officers' use of deadly force was objectively reasonable given the circumstances presented to them at the time. Justice Ambro, writing for the panel, found that at the time Jelani was shot, he was covered in blood, armed with a deadly weapon, did not respond to commands and was in the process of lunging at an Officer who had fallen to the ground. Contrary to Petitioners' assertion, the Third Circuit did consider the facts that Jelani was not wearing a jacket or shoes and had slit wrists, and determined that these indicators did not render the Officers' actions

unconstitutional, given the darkness of the scene and the brief time period in which the events unfolded. On this score, the Third Circuit held that there were no genuine issues of material fact that existed over whether the Officers used deadly force in an objectively unreasonable manner.

The Manigaults now present this appeal, arguing there are genuine issues of material fact regarding the reasonableness of the use of deadly force in the aforementioned circumstances. However, the undisputed facts unequivocally establish the heightened immediacy of the threat the Officers faced. Given these facts, the District Court and the Third Circuit properly concluded that it was reasonable as a matter of law for Officer Martinez to use deadly force in light of the substantial risk created by Jelani Manigault's violent and uncooperative behavior.

REASONS FOR DENYING THE PETITION

I. The Concurrent Findings Of Both The District Court And The Third Circuit Were Not Clearly Erroneous And, Therefore, Should Not Be Disturbed

Much to their disdain, both lower courts below decided against the Petitioners. However, to accept writ would be an unjustified departure from the long-established practice not to reverse findings of fact concurred in by two lower courts unless shown to be clearly erroneous. *Bodkin v. Edwards*, 255 U.S. 221 (1921); *see also Baumgartner v United States*, 322 U.S. 665 (1944). An examination of the evidence in this case

not only fails to disclose such clear error but, on the contrary, wholly supports the conclusions of the lower courts by a clear preponderance.

II. The Criteria Of Supreme Court Rule 10 Are not Satisfied

This Court has complete discretion to determine whether to grant a petition for certiorari, however, generally a party petitioning for a writ must be able to demonstrate that:

> (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter . . .
>
> (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals; [or]
>
> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Supreme Court Rule 10.

In the instant matter, a fair reading of the petition reveals that none of the Rule 10 criteria have been met. While Petitioners characterize this situation as one involving a "miscarriage of justice," they wholly fail to demonstrate how the Third Circuit rendered a decision that is in clear disconnect with the decision of another circuit court on the same matter and based on the same facts presented here. Quite to the contrary, the Third Circuit's holding is directly on par with various decisions by other circuits which hold that an officer's conduct which makes the need for deadly force more likely does not constitutionally disable the officer from later using deadly force to defend himself. *See, e.g., Young v. City of Killeen*, 775 F.2d 1349 (5th Cir. 1985); *Rhodes v. McDannel*, 945 F.2d 117 (6th Cir. 1991); *Reese v. Anderson*, 926 F.2d 494 (5th Cir. 1991); *Mace v. City of Palestine*, 333 F.3d 621 (5th Cir. 2003). These examples are a mere sampling of countless cases which all support the general principle that an officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack.

The other Rule 10 criteria are also absent. The New Jersey Supreme Court did not decide an important federal question, let alone decide it in a way that conflicts with the rulings of the high court of any other state, or of any United States court of appeals. Additionally, there is no important question of federal law for this Court to settle. As such, the petition for certiorari should be denied.

III. Summary Judgment Was Proper As Officer Martinez' Actions Were Reasonable In Light Of The Attendant Circumstances

A. The Qualified Immunity Standard

This case implicates anew the question of whether and under what circumstances a Police Officer is afforded immunity while acting during the scope of employment. The resolution of this purely legal question turns on whether the conduct of which a plaintiff complains violated clearly established statutory or Constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Immunity attaches regardless of whether the government official's error is "a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact." *Groh v. Ramirez*, 540 U.S. 551, 567 (2004).

In *Saucier v Katz*, the Supreme Court mandated the familiar two-step sequence for resolving qualified immunity claims. 533 U.S. 194 (2001). Because the question of whether an officer is entitled to qualified immunity is distinct from whether he used unreasonable force to begin with, the Supreme Court in *Saucier* articulated a new framework for analyzing qualified immunity claims. First, a court must decide whether the facts that a plaintiff has established are sufficient to make out a violation of a Constitutional right. *Id.* at 201. If the plaintiff fails to make out a Constitutional violation, the qualified immunity inquiry is at an end; the officer is entitled to immunity.

If evidence of a Constitutional violation has been adduced, Courts evaluating a qualified immunity claim move to the second step of the analysis: to determine whether the Constitutional right was clearly established. *Id.* at 199. To be "clearly established" for purposes of qualified immunity, the contours of the right must be sufficiently clear such that a reasonable official would understand that what he is doing violates that right. *Karnes v. Skrutski*, 62 F.3d 485, 492 (3rd Cir. 1995). That is, in the factual scenario established, would a reasonable officer have understood that his actions were prohibited? If it would not have been clear to a reasonable officer *what the law required* under the facts alleged, he is entitled to qualified immunity. Officers who make reasonable mistakes as to what the law requires are entitled to qualified immunity. *Saucier*, 533 U.S. at 205.

Recently, the Supreme Court jettisoned this two-step approach in *Pearson v. Callahan*, 588 U.S. __, 129 S.Ct. 808 (2009). In *Pearson*, the unanimous Court held that the order of the analysis laid out in *Saucier* "should not be regarded as mandatory." *Id.* at 818. Instead, lower courts may use their discretion to skip to the second question and avoid the Constitutional decision altogether. By noting that in many instances a court need not reach whether a Constitutional violation is alleged to determine if qualified immunity is appropriate, the *Pearson* Court stated that the first prong "sometimes results in a substantial expenditure of scarce judicial resources on difficult questions that have no effect on the outcome of the case." *Id.* Thus, courts are permitted to decide "which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand." *Id.*

So guided, summary judgment may be upheld here without ever addressing the Constitutional question, by virtue of the fact that the alleged unlawfulness of Officer Martinez' conduct in light of the attendant circumstances was not readily apparent, and thus not violative of clearly established law. However, because the parties briefed and both the District Court and the Third Circuit decided the case at hand in pre-*Pearson* fashion, it makes sense to adhere to a sequential mode of analysis here. We therefore face two questions: (1) whether Officer Martinez' conduct violated Jelani's Constitutional rights, and if so, (2) whether those rights were clearly established at the time of the shooting[1].

ANALYSIS

i. Officer Martinez' Conduct Did Not Violate Jelani Manigault's Constitutional Rights

In *Graham v. Connor*, the Supreme Court outlined the standard governing the right to be free from excessive force. 490 U.S. 386 (1989). The test is an objective one, which scrutinizes the reasonableness of the challenged conduct. *Id.* at 395. This "reasonableness" inquiry takes into account ***only*** the facts and circumstances known to the government actor at the time of his or her action. *Rodriguez v. City of Passaic*, 730 F. Supp. 1314 (D.N.J. 1990). In other words, for a court to determine the

1. Because there was no Constitutional violation, we do not need to address the second prong of the qualified immunity analysis. Respondents do note, however, that a determination that the force used by Officer Martinez was excessive and thus violated Jelani's Constitutional rights would not end the qualified immunity inquiry.

reasonableness of an officer's action, it "must stand in *his* shoes and judge the reasonableness of his actions based upon the information he possessed and the judgment he exercised in responding to that situation." *Id.* Knowledge of facts and circumstances gained by the officer after the completion of the act is irrelevant to a determination of the reasonableness of that officer's judgment vis-à-vis the conduct at issue. *Id.*

Because police officers are often forced to make split-second judgments in "circumstances that are tense, uncertain, and rapidly evolving, the amount of force that is necessary in a particular situation, and the reasonableness of the officer's belief as to the appropriate level of force, should be judged from that on-scene perspective." *Graham*, 490 U.S. at 396-397. With these considerations in mind, the *Graham* Court fashioned a test that cautioned against the "20/20 vision of hindsight" in favor of deference to the judgment of reasonable officers on the scene. *Id.*

Chief Justice Rehnquist explained that the test of reasonableness in this context "requir[es] careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Id.* at 396. Thus, pursuant to *Graham*, we must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the Officers at the scene. We must never "allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that police officers

face every day." *Smith v. Freland*, 954 F.2d 343, 347 (6th Cir. 1992).

On this score, it is prudent to understand the dangers and limitations imposed upon officers when confronting a suspect with a weapon. What constitutes reasonable action may seem quite different to someone like Officer Martinez, facing an armed assailant, than to someone analyzing the question at leisure. In a very real sense, a police officer on the scene must make an instantaneous call in close cases. The range of permissible action must accommodate marginal cases sufficiently that fear of potential civil liability does not induce paralysis of action. Measured against these standards, it is beyond question that Officer Martinez' actions were objectively reasonable.

Contrary to Petitioners' implication, it is undisputed that it took **no more than mere seconds** from the time Jelani charged Officer King to the time that all three shots were fired. Officer King recalled that he and Officer Martinez fired their weapons almost at the same time and that the time between the first and second shots was "well under a second." He further stated that "**[a] second wouldn't even be close, it was almost the exact same time.**" Likewise, both Officers Petrone and Williams stated that the three gunshots came within split seconds of each other. As Officer Williams put it, "[a]s the first shot was fired, the shots that came after them happened so quickly that I really- you know, there wasn't like a span of time between the first shot where I could get a mental picture of what was going on."

The Manigaults discount the celerity with which these events unfolded. However, the crux of the matter is that it appeared to all who had a view of Jelani at the relevant time that he was an out-of-control individual. The very real danger the Officers perceived was immediately intensified when Jelani lunged at Officer King with the knife in an apparent attempt to cause him physical harm. Because the use of firearms is so commonplace nowadays, the destructive potential of edged weapons is far from appreciated, resulting in the, "He's only got a knife" mentality. When an armed suspect charges, the entire scenario will transpire in an incredibly short period of time, as here, and the techniques used to counter the attack must be clean and decisive. A seemingly insignificant puncture wound can result in significant blood loss that anyone short of a surgical staff on site would be powerless to abate. Based on his years of training and expertise, upon observing Jelani charge toward Officer King and subsequently turn and face him still holding the knife in the air, Officer Martinez was left with no choice but to discharge his weapon.

At the same time, Officer Martinez had to concern himself not only with Jelani's level of threat, but with the background of his target, the "use-of-force" continuum, shot placement, communication with the suspect as well as the other Officers, and control of Jelani's advancement upon Officer King, who was down on the ground, scrambling in the darkness. Rejecting the "vision of hindsight" so condemned by the *Graham* Court, it is evident that any lapse in response by Officer Martinez may well have rendered the situation catastrophic.

Although the events which form the basis for this lawsuit are, indeed, tragic, we cannot fail to look past the fact of the shooting to the danger any reasonable person would have believed Jelani posed on that rugged, wooded landscape in the middle of the night. Certainly with the luxury of hindsight one can parse each discrete act within those mere seconds and analyze each as if under a microscope. However, one must not lose sight of the fact that Officer Martinez had no such luxury and was forced to act in the blink of an eye. In this regard, the District Court properly noted that it was "mindful that its 'recitation of events is a discussion in slow motion of an incident that took place in a matter of seconds.'" (citing *Carswell v Homestead*, 381 F.3d. 235, 240 (3rd Cir. 2004) (Appendix B). Keeping in mind that a threat that may seem inappreciable in retrospect may appear more substantial to an officer whose own life or safety is at stake, there is no doubt that the force used by Officer Martinez was objectively reasonable. However, Petitioners posit that the Officers' use of force was excessive notwithstanding this factual backdrop. Their argument comprises four separate parts. We address each in turn:

a. ***Jelani was not "stopped in his tracks" and posed a continuing threat***

The Court must reject the Petitioners unfounded allegations that the shooting was unreasonable since "Jelani did not pose a threat to anyone" after the first bullet fired by Officer King, as this assertion is squarely at odds with the sworn testimony of Officers King, Petrone and Williams. While Courts have, on occasion, recognized that an officer's use of deadly force, which

may initially be reasonable, may become unreasonable as the course of events unfolds, this is not one of those situations. That multiple shots were fired does not suggest the Officers shot excessively as much as it indicates that they sought to ensure the elimination of a deadly threat.

Officer Petrone testified that he could not tell where, if anywhere, the first shot struck Jelani and that, in fact, he **did not** observe Jelani double over or bend at the waist. Officer Petrone stated that Jelani "***made a turn almost like he wasn't phased or hit. He just made a turn toward another threat . . . Still standing with the knife up . . .***" In actuality, Jelani had merely turned in the direction of another Officer, to wit, Officer Martinez. To be sure, Officer Petrone was attempting to maneuver himself into a position where he too "could take a shot." Had Officer Martinez not been in Officer Petrone's line of fire, Officer Petrone would have discharged his weapon as well.

As there are no conflicting accounts of Jelani's whereabouts or his menacing acts, there are only witnesses, the ones closest to the action, who all saw Jelani charge toward Officer King with his knife in the air, there is no genuine issue as to whether the threat posed by Jelani had ceased at the time that all three shots were fired.

b. ***It was impossible for the Officers to diagnose Jelani's mental health***

Petitioners make much of the fact that Jelani was not wearing a jacket and/or shoes at the time of the encounter and that he had slit wrists, devoting a considerable portion of their petition urging that the Officers should have, somehow, diagnosed Jelani as a "mentally and emotionally disturbed man." To accept such a proposition would wholly remove this case from any semblance of rationality.

Without much belaboring the point, even if Jelani had cuts on his wrists, **none** of the Officers observed same at any point prior to the shooting. Likewise, the Officers did not observe that Jelani was without shoes, as they were, for obvious reasons, not focused on his feet in the pitch darkness. It was not until ***after the shooting*** that any Officer observed slits on Jelani's wrists or discerned whether Jelani was wearing shoes.

Even assuming, *arguendo*, that the Officers had made these observations, the decisive factor weighing against the Petitioners' argument is that the Officers, in responding to an emergency situation, are not making clinical determinations about an individual's mental well-being based solely on the fact that he may not be wearing a jacket and/or shoes. From the diagnostic standpoint alone, legitimate manifestations of mental illness are not likely to be in this form. Even if they were, same would not defeat the reasonableness of the Officers' actions in response to the lethal threat posed by Jelani. *See Lamont v. New Jersey*, 2009 WL 483899 (D.N.J. 2009) (where the fact that plaintiff was in sweatpants and

shoeless did not create an issue of material fact as to the defendant officers' decision to use deadly force).

Moreover, none of the Officers, save for Officer King, ever heard Jelani say anything along the lines of "kill me, kill me." Only Officer King testified that Jelani made a comment, which was either "go ahead and kill me," or "you're going to have to kill me." But at the moment that sentence ended is when Jelani charged, giving Officer King no time to even process these words. The Petitioners' allegations do not at all take into account that the Officers were in the dark, dense woods, relying on their flashlights for visibility, facing an armed and bloody Jelani who had stabbed an innocent homeowner just minutes prior thereto, and he refused to voluntarily surrender his weapon.

Notably, Dr. Weinapple, Jelani's psychiatrist, discharged him from Princeton Medical Center without any medication and without any diagnosis of mental illness. If a licensed medical practitioner, whose field of expertise is assessing mentally and emotionally disturbed individuals, did not find Jelani to be mentally disturbed, the notion that Jelani's purported mental disturbance should have been "obvious" to the Officers is illogical.

This is not a situation where the Officers failed to use any judgment and immediately fired without attempting to defuse the situation. Rather, the Officers testified that they **would have maintained their positions and attempted to reason with Jelani for an indefinite period of time had he not charged Officer King with a weapon**. Therefore, giving due regard to

the pressures faced by the Officers, it is unreasonable to suggest that they should have disregarded the obvious dangers presented.

c. *The fact that the Officers came within 21 feet of Jelani does not render their conduct unreasonable*

Another issue raised by the Petitioners which the Court must equally reject is that the Officers allegedly did something that was tactically incorrect in their approach that contributed to the need to use deadly force, namely, by coming within 21 feet of Jelani. The fallacy in this argument lies in the fact that the Petitioners have consistently gravely distorted what has come to be known as the "21-foot rule."

There is absolutely no "policy" that mandates that the Officers must maintain any specific distance from an armed suspect. The "21-foot rule" is a "reaction time" calculation fairly standard in law enforcement training, which states that, in the time it takes the average officer to recognize a threat, draw his sidearm and fire 2 rounds at center mass, an average subject charging at the officer with a knife or other cutting or stabbing weapon can cover a distance of 21 feet. There is no authority in any jurisdiction, however, for the proposition that coming within 21 feet of a suspect ipso facto creates a cause of action for a Constitutional violation.

This distance should only be referenced as a very loose guideline, naturally subject to limitations and exceptions. In reality, all street officers must, by the very nature of their assignment, close the distance to a

suspect in order to control the situation. Each situation confronted is going to be different with unforeseen variables. Officers need the latitude to evaluate the situation in their, as well as the public's, best safety interests. If there must be error, it is far better to err in the favor of one's survival when faced with a suspect with a knife that has the present ability and demonstrated intent to use it, than to ask an officer to hold fire in order to ascertain whether the suspect will, in fact, injure or murder the officer. The high numbers of officer mortalities in recent years illustrate the unreasonableness of such a notion. As noted by the *Graham* Court, the "public interest may be better served by action taken 'with independence and without fear of consequences." 490 U.S. at 819.

Moreover, when referring to distances, the Officers' actions are invariably going to be a reaction to the suspect's behavior. What the Petitioners fail to point out is that the Officers took up position around Jelani at approximately 20 feet. It was Jelani who closed the distance by charging at Officer King. Under these circumstances, it is hard to imagine what choice Officer Martinez and his fellow Officers had but to react as they did.

Even if the Court assumes that the Officers violated proper procedures by narrowing their perimeter, this alleged breach does not suffice to overcome qualified immunity, as the act that justified the shooting was Jelani charging at Officer King. As Jelani created the situation that ostensibly warranted the use of deadly force, there is no triable issue of material fact in this regard. Indeed, the Third Circuit thoroughly considered

Petitioners' claims vis-à-vis the distance within which the Officers came toward Jelani and reasoned that, even assuming there to have been an abandonment of protocol, this could not form the basis for a remedy under 42 U.S.C. § 1983 or deprive the Officers of qualified immunity. Relying on this Court's decisions in *Collins v City of Harker Heights*, 503 U.S. 115 (1992) (holding that §1983 does not provide a remedy if there is no violation of federal law) and *Davis v Scherer*, 468 U.S. 183 (1984) (noting that officials do not lose qualified immunity where they violate administrative directives), the Third Circuit appropriately determined that the Officers did not violate Jelani's Constitutional rights.

d. *The fact that Officer Martinez' actions were objectively reasonable is not thrown into doubt by the fact that his deposition was not conducted*

Lastly, Petitioners argue the deposition of Officer Martinez was not conducted, thus there remains a genuine issue of material fact which was not given due deference by the lower courts. The extent to which this argument lacks merit need not be addressed at length[2].

It is not enough to pose philosophic doubts regarding the conclusiveness of undisputed evidentiary

2. Officer Martinez was not produced for deposition due to medical reasons as determined by the Honorable John J. Hughes, U.S.M.J. An Order dated February 28, 2008 permitted a Rule 35 Independent Medical Examination (IME) if Petitioners sought to dispute the conclusions contained in the narrative medical report prepared by Officer Martinez' physician. No IME was ever conducted.

facts. Whatever impressions Petitioners hope to elicit through Officer Martinez' deposition testimony are inconsequential to the resolution of this matter. Petitioners argue as if there were a *mens rea* to be established in this case. However, because the relevant test in this case is whether Officer Martinez' use of force was ***objectively reasonable*** in light of the circumstances confronting him, the focus is on the viewpoint of a reasonable police officer in his position, and his intentions or subjective impressions are wholly irrelevant. Considering the already large record compiled, which includes Officer Martinez' voluntary statement, the absence of a *Rule* 56(f) affidavit, the irrelevance of the discovery request, and the conjectural nature of the Petitioners' contentions, the Third Circuit did not err in upholding the motion for summary judgment and deciding in Officer Martinez' favor.

This decision is consistent with binding high court precedent, which states:

> [T]he question is whether the officers' actions are "objectively reasonable" in light of the facts and circumstances confronting them, **without regard to their underlying intent or motivation**. An officer's evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force; nor will an officer's good intentions make an objectively unreasonable use of force constitutional.

Graham, *supra*, 490 U.S. at 397, 109 S.Ct. 1865. Illustrative of this point is the Fifth Circuit's decision in

Mace v Palestine, 333 F.3d 621 (5th Cir. 2003), in which the court held it was improper to consider the defendant Officer's subjective intent as evidence of whether a reasonable officer could have perceived a threat of danger to himself or others in the circumstances before him.

It is undisputed that Jelani was agitated and brandishing a knife. Jelani did not respond to commands to drop his knife. The record evidence is also uncontradicted that when he was shot, Jelani was raising his knife toward the officers. The record further shows that this event took place in the darkness and on rough terrain, which limited the Officers' ability to retreat or to keep Jelani from harming others in the area. Based on the foregoing, it was objectively reasonable for Officer Martinez to make the split-second determination that Jelani posed a threat of serious physical harm and that deadly force was necessary. Any purportedly disputed fact issues are, thus, immaterial because their resolution would not alter the ultimate conclusion.

CONCLUSION

While the loss of any life is regrettable and even heartbreaking, the core uncontested details of this case reveal an encounter where the use of deadly force was, as sad as the outcome might be, imperative and, thus, objectively reasonable. The law does not require a reasonable officer to await physical harm before taking self-protective action; by then, it is often too late to take safety precautions. The only objectively reasonable response in this situation was to use deadly force.

The Third Circuit correctly stated the applicable rules of law and its rationales and properly concluded that the Defendants' actions were objectively reasonable. The Circuit Court's unwillingness to find the existence of a material issue of fact based on nothing more than Jelani's clothing and Petitioner's inability to gauge Officer Martinez' subjective impressions cannot be described as a conflict with the decisions of any other circuit court or any other decision of this Court. The Third Circuit did not ignore, or otherwise fail to accord appropriate respect to, a controlling decision of this Court. Nor is this the situation where an intervening decision of this Court created a conflict with a previously issued court of appeals decision that was not yet final. The petition also fails to establish that this case presents an important question of federal law that has not yet, but should be, resolved by this Court. Petitioners' asserted error consists solely of purported erroneous factual findings. Such a plea is, in all events, antithetical to the principles of judicial restraint that guide this Court's exercise of certiorari jurisdiction. Even if a mere plea for error correction could justify granting certiorari, the petition fails because the Third Circuit's decision was plainly correct.

Finally, even if the question presented in the petition could be said to have some general significance, in the abstract (and it does not), as to how law enforcement officials should apprehend "mentally distraught" individuals, resolution of this question is adequately analyzed by the objective reasonableness standard set forth in *Graham* and its progeny. A suspect's mental condition is simply but one factor to be considered in the totality of circumstances test. This case involves nothing more than a straight-forward application of established legal principles. To be sure, the frequency with which the question presented here has arisen and been decided by this Court makes clear that this issue need not be addressed again. Accordingly, Officer Martinez was entitled to qualified immunity and the petition for a writ of certiorari should be denied.

Respectfully submitted,

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SUPREME COURT, U.S.
FILED
DEC 3 - 2009

No. 09-417

IN THE

Supreme Court of the United States

CAROL MANIGAULT, Individually and as Administratrix ad Prosequendum and General Administratrix of the Estate of Jelani Darren Manigault, Deceased, and CAROL MANIGAULT and ANDREW MANIGAULT, Individually and as Parents and Natural Guardian of Jelani Darren Manigault,

Petitioners,

v.

CHRISTOPHER KING, HARRY MARTINEZ, FRED WILLIAMS, JUDD PETRONE, TOWNSHIP OF PRINCETON, MERCER COUNTY, STATE OF NEW JERSEY, PRINCETON TOWNSHIP POLICE DEPARTMENT, PRINCETON TOWNSHIP, JOHN/JANE DOES 1-10; ABC CORP. 1-10 AND/OR XYZ ENTITIES 1-10,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION OF RESPONDENTS CHRISTOPHER KING, FRED WILLIAMS, JUDD PETRONE, TOWNSHIP OF PRINCETON AND PRINCETON TOWNSHIP POLICE DEPARTMENT

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COUNTER STATEMENT OF ISSUES PRESENTED FOR REVIEW

Whether qualified immunity and summary judgment to the defendant police officers were properly granted, in light of the fact that there was nothing unreasonable in the manner in which the officers acted in confronting the plaintiffs' decedent and the fact that there was no "clearly established right" which was violated by the officers.

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FACTS RELEVANT TO THE ISSUES SUBMITTED FOR REVIEW

A. The Home Invasion And Attempted Murder

On January 23, 2003, at approximately 1:45 a.m., Mrs. Martha Sullivan Sword awoke to her dogs barking. As she was getting up, she heard the doorbell ring. (App. 184.1).

Mrs. Sword opened an upstairs window and called out, but all she heard was somebody crying and moaning. (App. 190). The person at her front door was Mr. Jelani Manigault, a mentally and/or emotionally disturbed man who had, less than an hour before, left Tenacre, a Christian Science facility located in Princeton, New Jersey where he was staying while undergoing psychiatric evaluation. (App. 173-174) He left the Tenacre facility in his mother's car and crashed into a tree near the Sword residence, which is located at 1036 Great Road, Princeton, New Jersey. (Id.).

Mrs. Sword woke Mr. William Sword and informed him someone was at the door. (App. 184.1) They then went downstairs together and, on their way, Mrs. Sword picked up the cordless phone from the second floor. (App. 190) Mr. Sword turned on the outside light and saw Mr. Manigault in only a tee shirt, moaning and saying incomprehensible things. (App. 184.1, 190)

As it was extremely cold outside, approximately six degrees, and as Mr. Manigault appeared to need help, Mr. Sword opened the door. (Id.) As Mr. Sword opened the door, Mr. Manigault pushed past Mr. and Mrs. Sword

and entered the house into the mudroom, which is attached to the kitchen. (Id.) As he entered the house, Mr. Manigault said, "Oh, I've really done it now. Oh, this is it." (App. 190)

As he walked from the mud room into the kitchen, Mr. Manigault became very agitated, his eyes were darting all over the room, and he began rummaging around in the kitchen drawers. (App. 184.1). Mrs. Sword went out of the kitchen and towards the back staircase to get her brother, Mr. Robert Sullivan, who was staying as an overnight guest at the house. (App. 190.1).

Mr. Manigault grabbed an eight-inch knife out of one of the kitchen drawers and attacked Mr. Sword with the knife. (App. 184.1). Mrs. Sword screamed and told her brother to go downstairs without getting dressed. Mr. Sullivan raced passed her on the stairs. (App. 190.1).

Mr. Manigault stabbed Mr. Sword fourteen times in total and inflicted eight major wounds. Mr. Sword suffered a punctured lung, broken ribs, and knife wounds to his chest, back, right arm, left shoulder, and left hand. (App. 184.1) As Mr. Sullivan came down the stairs, he saw Manigault stabbing Mr. Sword, so he grabbed Manigault around the throat and lifted him back off his feet. (App. 192-192.1).

Mrs. Sword called 9-1-1 and told the operator that an intruder was in their home, that her husband was being stabbed, and that her brother and her husband were fighting back against the intruder. (App. 190.1). During this struggle, Mr. Sword managed to hit Mr. Manigault on the head with a frying pan and temporarily

knock him out. (App. 186-186.1). Mr. Manigault came to, and exited the kitchen towards the stairs leading to the second floor. (App. 192.1-193).

Manigault still had the knife in his possession at this time. (App. 193). Mr. Sword approached Manigault from behind and again hit him on the head with the frying pan. Manigault went down unconscious for the second time. (Id.)

Mr. Sullivan again tried to administer aid to Mr. Sword's wounds and when he turned back around, Mr. Manigault was back in the kitchen with the knife, cutting his own wrists. (App. 193). As this was occurring, Mr. Manigault repeated, "Just kill me. Just kill me." (Id.; 190.1).

Mr. Sullivan was able to take the knife, and force Mr. Manigault back to the door and eventually outside. (App. 193.1). Once Mr. Manigault was outside, Mr. Sullivan sat the knife down on the counter, attempted to lock the mud room door leading outside, and then went around the house securing all of the other doors. (App. 193.1-194). However, when Mr. Sullivan returned to the kitchen he found that he had apparently not locked the door properly, as Mr. Manigault was back in the kitchen with the knife in his possession once again. (App. 193.1). Mr. Manigault stood in the kitchen, cutting his wrists with the knife, with blood from the wounds squirting on the ceiling. (Id.)

Mr. Sullivan yelled at Mr. Manigault to leave the house. (App 193.1) Mr. Manigault complied, walking outside with the knife in his hand. (Id.).

B. The Police Arrive

Sergeant Patrolman Judd Petrone ("Sgt. Petrone") responded to Mrs. Sword's 911 call, with information provided by the dispatcher that an intruder had a knife and was stabbing someone inside the home. (App. 197). When he was approximately a mile from the residence, Sergeant Petrone received an update from the dispatcher that the intruder had been subdued on the kitchen floor. (Id.).

Sgt. Petrone turned onto Great Road and saw a couple standing in the roadway who flagged him down. (App. 382). He assumed the couple had some connection with the home invasion. However, the couple had merely noticed the Manigault automobile, left after the accident on the side of the road. The couple knew nothing about the stabbing. (Id.)

Patrolman Martinez arrived and parked his vehicle in front of Sergeant Petrone's vehicle, a little closer to the accident scene. (Id.). Patrolman Martinez got out of his car and cleared the crashed vehicle to make sure no one was still in the vehicle. (Id.).

Both officers then preceded toward the Sword's driveway at 1036 Great Road. (Id.). Sergeant Petrone received a second update that the intruder was now outside the home and coming down the driveway. (Id.)

Patrolman Martinez was approximately thirty feet ahead of Sgt. Petrone when two other patrol cars arrived, driven by Patrolman Fred Williams and Patrolman Christopher D, King. (App. 198).

C. The Police Confront Manigault

Patrolman Martinez saw Mr. Manigault first. He ran toward him, yelling, "Drop the knife, police. Drop the knife." Sgt. Petrone followed in Patrolman Martinez's direction. (App. 198). Officer King left his vehicle and followed Officer Martinez and Sgt. Petrone into the yard. (App. 204).

The yard was unkempt and rustic, with stones and trees everywhere. It was dark out that night and there were no lights in the area. (Id.; 212).

When Sgt. Petrone first saw Mr. Manigault, they were approximately thirty apart. Sgt. Petrone illuminated Manigault with a flashlight, as it was "totally pitch dark [sic]." He had his revolver drawn. (App. 383-384; 391) Mr. Manigault had blood throughout his clothing and was standing still holding a knife with blood on it in his right hand at approximately head level. (App. 383-384).

Sgt. Petrone testified that Mr. Manigault was listening to their commands, but not obeying them. (App. 383). Patrolman Martinez was off to Sgt. Petrone's right and Sgt. Petrone positioned himself to the left of Mr. Manigault. (Id.). Patrolman Martinez and Sgt. Petrone continuously voiced their commands, loud enough for Corporal Williams to hear from the side of the road. (App. 384; 438).

Manigault was surrounded on three sides by Sgt. Petrone, Patrolman Martinez and Officer King. Petrone and Martinez were on the two sides of a roughly

U-shaped formation, with Officer King between the two other officers. Manigault was in the center, with the Sword house behind him, approximately fifty feet beyond the open end of the "U." (App. 385)

Mr. Manigault turned to face Officer King, putting his back to Patrolman Martinez and Sgt. Petrone. At this time, Petrone and Martinez made a move to get a little bit closer. Sgt. Petrone explained that Patrolman Martinez made a move to the right to get closer and that he had moved up from the left. (App. 384).

Sergeant Petrone testified that when Mr. Manigault turned his back to them they believed he was finally going to obey their commands so they made their move to get closer in an attempt to subdue him. (App. 384) Officer King did not move toward the subject, but maintained a distance of approximately twenty-feet. (App. 412-413, "I did not close the gap any farther from that 20 feet.")

Patrolman King was positioned between Sgt. Petrone and Officer Martinez and he heard the commands from both officers saying, "Stop, drop the knife." Patrolman King characterized Patrolman Martinez's commands as almost pleading with Mr. Manigault to obey. (App. 412).

All three officers continued to voice their commands while Mr. Manigault had his back to them in the belief that he was going to finally comply. (App. 384-385). However, instead of obeying the Officers' commands, Mr. Manigault then abruptly pivoted, turning completely around, and stopped, facing Patrolman King. (App. 385;

413) Mr. Manigault said, "go ahead and kill me," or "you're going to have to kill me," and, immediately after finishing the statement, charged Patrolman King. (App. 385; 413)

Sgt. Petrone testified that he could not get a clear shot at Mr. Manigault because Patrolman Martinez was in his line of sight, so he maneuvered to get into position. Patrolman Martinez maneuvered to get behind Mr. Manigault to put himself in a position to stop the threat. (App. 386).

When Manigault broke into a run with the knife in his hand, Patrolman King backed up to maintain a twenty-foot distance between himself and Mr. Manigault. (App. 414). Patrolman King took a few steps back before tripping on a tree stump. He estimated that Mr. Manigault closed to about ten to fifteen feet. (Id.)

Patrolman King fell and landed on his buttocks and lower back, but maintained a seated position. He kept his head up and raised one of his feet as a reaction to defend himself, as he yelled, "Stop." (App. 414). Mr. Manigault did not respond to Patrolman King's commands and continued to charge him with the knife. (Id.).

Patrolman King realized that Mr. Manigault was not going to stop and his only course of action was to discharge his firearm at Mr. Manigault. (Id.). When Mr. Manigault was only six feet away, Patrolman King fired his weapon and hit Mr. Manigault in the pelvic region. (App. 414-415).

The impact of the bullet caused Mr. Manigault to change position such that Patrolman King momentarily lost site of him. (App. 415). Patrolman King explained that he was illuminating Manigault with his flashlight and when he discharged his weapon he had difficulty determining where Manigault had gone. (Id.) Patrolman King testified that not even a second later, almost instantaneously, Patrolman Martinez fired two rounds at Mr. Manigault. (App. 386; 416; 439).

Sgt. Petrone indicated the subject was down, instructed Patrolman King to disarm the suspect and check his vital signs, directed Patrolman Martinez to go inside the house and assess the situation there, and directed Patrolman Williams to secure the scene at the end of the driveway. (App. 388; 416; 440). Williams did not participate in surrounding Manigault, nor did he fire his weapon. (App. 198; 438-439) When the shooting occurred, Officer Williams was approximately thirty to fifty feet away, but he was able to see Mr. Manigault. (App. 439).

Patrolman King removed the knife from Mr. Manigault's right hand and placed it on a nearby tree stump. He then checked Mr. Manigault's carotid pulse and looked, listened and felt for signs of breathing. He found no signs of life. (App. 417).

Sgt. Petrone then made arrangements over the radio to secure the area. (App. 388).

D. The Aftermath Of The Shooting And The Lawsuit

Subsequently, the Mercer County Prosecutor's Office investigated the shooting death of Mr. Manigault and concluded that the officers' use of force was entirely proper. (App. 213-215) Their report noted, "[t]he investigation of this case, considering all of the facts and circumstances, indicates that the use of deadly force by Officers Martinez and King was justified. Furthermore, a review of the Mercer County Use of Force Policy indicates no violation of the policy." (App. 214).

The plaintiffs – the parents and guardians of the decedent – filed a complaint against the four officers on the scene, as well Princeton Township and the Princeton Township police.(App. A32 et seq.) The plaintiffs alleged a claim under 42 U.S.C. §1983 as well as pendent State claims.

After discovery ensued, a motion for summary judgment was filed by the defendants against the plaintiffs. (App. 73 et seq.) The defendants argued that there was no genuine issue of material fact and that the defendants were entitled to judgment as a matter of law. On August 18, 2008, the Hon. Anne E. Thompson, U.S.D.J. entered her order and opinion granting the motion for summary judgment (later amended). (App. 1-24)

On appeal, the plaintiffs have argued that it was erroneous to grant summary judgment to Officers Martinez and Petrone because, the plaintiffs assert, these officers were not entitled to qualified immunity. On July 13, 2009, after full briefing, a panel of the Court

of Appeals for the Third Circuit consisting of the Hon. Dolores Sloviter, U.S.C.J., the Hon. Thomas Ambro, U.S.C.J., and the Hon. Kent Jordan, U.S.C.J., affirmed the grant of summary judgment, finding that the officers were fully protected by qualified immunity. (Petition App. 1a-7a)

ARGUMENT AGAINST GRANTING THE PETITION

A. The Considerations Preferred By This Court When Granting a Petition Are Not Present Here

Rule 10 of the Supreme Court Rules details the reasons which this Court considers compelling when determining whether to exercise its prerogative and issue a writ of certiorari. Those reasons include when "a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter," or when "a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court." SUP. CT. R. 10(a), (c).

The plaintiff asserts that a writ of certiorari should be granted so this Court can examine, in general, the standards to be applied to the use of force against a "mentally distraught" individual, and, in particular, the standards as they were applied in this case.

However, these reasons do not provide a sufficient basis for certiorari. The plaintiff has not provided any guidelines as to how the generally applicable law used in connection with any use-of-force analysis should be

modified when the person who the officer faces is mentally disturbed. The "objective reasonableness" test of *Graham v. Connor*, 490 U.S. 386 (1989) already considers the facts and circumstances facing the officer. That a person is mentally disturbed does not make the threat posed by that person any less real or urgent, so it is unclear what, in addition to the *Graham* analysis, would be appropriate.

Further, as applied to this case in particular, the plaintiff notes the "obvious mental condition of Jelani [Manigault]" when the officers encountered him. (Cert. Petition at 6.) However, the officers first encountered Manigault in the dark yard in front of the Sword residence, by the light of flashlights. Even considering the fact that Manigault wore no coat and had wounds on his arms, the plaintiff's assertion that Manigault's mental condition was "obvious" is absurd. Further, even if the officers knew that Manigault had mental illness, there was nothing in the manner they acted which constituted excessive force, given the actions that Manigault, himself, had undertaken.[1]

As such, the petition for writ of certiorari should be denied.

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1. The plaintiff also presents an argument that the plaintiff had a "fundamental right" to obtain the testimony of Officer Martinez. This argument will, presumably, be addressed by Officer Martinez's counsel.

B. The Officers Are Entitled To Qualified Immunity.

Further, the petitioner's assertion that the Third Circuit's decision in this case was a miscarriage of justice is wrong. However, affirming the grant of summary judgment was not a miscarriage of justice; indeed, that decision was not even erroneous.

The officers in this case would be entitled to qualified immunity for their exercise of force "insofar as their conduct does not violate clearly established statutory or Constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

In this case, there was no violation of any constitutional right. A claim of excessive force under the Fourth Amendment must be analyzed by the objective reasonableness of the action. The test asks whether, under the totality of the circumstances, "the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivations." *Graham*, 490 U.S. at 397. If a use of force is objectively reasonable, then a bad faith motivation is immaterial; also an officer's good faith is irrelevant if the use of force is objectively unreasonable. *Id.*, at 396.

Furthermore, the facts of the case must be viewed in proper perspective—that is, from the point of view of the officer on the scene—and not retrospectively:

> the 'reasonableness' of a particular use of force must be judged from the perspective of a

> reasonable officer on the scene, rather than with the 20/20 vision of hindsight . . . The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.

Graham, 490 U.S. at 396-397.

Factors to be considered in making a determination of reasonableness include 1) the severity of the crime at issue, 2) whether the suspect poses an immediate threat to the safety of the officers or others, 3) whether he actively is resisting arrest or attempting to evade arrest by flight, as well as 4) the possibility that the person subject to the police action are themselves violent or dangerous, 5) the duration of the action, where the action takes place in the context of perfecting an arrest, 6) the possibility that the suspect may be armed, and 7) the number of persons with whom the officer must contend at one time. See, *Graham*, 490 U.S. at 396, 109 S.Ct. at 1872.

An analysis of the *Graham* factors, applying the totality of the circumstances, shows that Sgt. Petrone and Officer King acted entirely reasonably. 1) The crimes at issue, attempted murder, assault, home invasion and trespass, were severe to the extreme. 2) The threat which the decedent posed to the police and others was manifest in his attack on the Swords and his potentially murderous attack on Officer King. 3) The suspect was clearly resisting arrest, as the officers tried for many minutes to convince the decedent to put his weapon down. He refused to disarm

himself and, instead, charged Officer King. 4) The possibility not only existed that the decedent could become violent and dangerous, he actually was violent and dangerous. 5) The duration of the action complained of by the plaintiffs is inapplicable, as the arrest was never perfected. 6) The decedent was clearly armed and brandished his weapon openly before the defendants. 7) The decedent was the only person the officers had to deal with at this time.

Taking these factors into consideration, the only sensible conclusion is that Sgt. Petrone acted reasonably when he stepped toward Manigault at a point where it appeared that Manigault might start acting in compliance with the directions given him by the police and that Officer King acted reasonably when he fired upon Mr. Manigault. These action were objectively reasonable, given the danger Manigault posed and the apparently momentary opening presented to Sgt. Petrone to resolve the situation without further bloodshed.[2] Officer King's actions were, beyond doubt, reasonable, as he did not move closer to Manigault and only acted against him when he charged Officer King brandishing a deadly weapon.

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2. Further, there is absolutely nothing in the record to remotely suggest that the actions of the officers in moving closer to Mr. Manigault prompted Mr. Manigault to attack Officer King. Mr. Manigault's back was turned to the officers, which led them to believe that Manigault was going to obey the commands he was given. (App. 384.) Instead, he raised his knife and began toward Officer King. There is simply nothing on the record to support the plaintiffs' argument that the actions of the officers in moving closer to Mr. Manigault prompted Manigault to attack Officer King.

The plaintiff's argument asserts that the totality of the circumstances in this case should lead this Court to find that the deadly force was excessive because the officers, by "surround[ing] Manigault] and clos[ing] in on him to a distance of between 10 and 12 feet, contrary to the police department's policy and procedure of maintaining a distance of at least 21 feet from a suspect . . . undoubtedly precipitated the alleged perceived need for defendant police officers['] use of deadly force." (Petition at 6-7)"

However, as the Third Circuit Court of Appeals noted, even if it were true that the officers violated departmental policy, this did not constitute a constitutional violation nor did it prevent the application of qualified immunity. *See, Collins v. City of Harker Heights*, 503 U.S. 115, 119 (1992); *Davis v. Scherer*, 468 U.S. 183, 194 (1984).

Given all of the facts of this case – from the knowledge that the decedent had brutally attacked at least one person without provocation, was bloodied and brandishing a knife, and failed to drop the weapon or otherwise respond to the officers' instructions – it would be unwarranted to conclude that the actions of any of the defendants in this case was anything but objectively reasonable under the circumstances.

As such, the grant of summary judgment was proper and it is respectfully requested that this Court deny the petition for certiorari.

CONCLUSION

For all of the foregoing reasons, this Court is respectfully requested to deny the plaintiff's Petition for Writ of Certiorari.

Respectfully Submitted,

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